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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,000	12/05/2003	John M. Guynn	15257.3.2	9102

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EXAMINER	
VALENTI, ANDREA M	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/729,000	GUYNN, JOHN M.	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13 and 16-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13 and 16-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,396,013 to Hasslinger.

Regarding Claim 29. Gee teaches a restraint device *for use in restraining a child in a desired position* comprising: a flexible corset or harness comprising one strap *sized and configured so as to wrap around at least a portion of a child's body* (Hasslinger #10); at least one fastener connected to the corset or harness that permits selective fastening and unfastening of the corset or harness around at least a portion of the child's body (Hasslinger #26); a handle (Hasslinger #38) *configured* to be gripped by a person's hand (Hasslinger abstract), attached to the corset or harness in a manner so that the handle is positioned next to a the child's body (Hassling Fig. 4) and at least partially between the child's head and buttocks so that a hand gripping the handle remains close to the child's body when the restraint device is in used and so that at least a portion of the hand gripping the handle is disposed between at least a portion of the handle and the child's body; and at least one of a cushioning material disposed on at least a portion of an inner surface of the strap so as to shield selected from soft and flexible (Hasslinger Col. 3 line 16-24 and Col. 5 line 26-27).

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8, 20-24, 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,514,019 to Smith.

Regarding Claims 1 and 20-24, Smith teaches a restraint device and method (Smith fig. 2) comprising a pair of opposing handles (Smith Fig. 2 #8a and 8b), each *configured to be gripped* (functional language which means the apparatus must merely be capable of performing that function, the examiner has underlined the additional functional language that appears in the claims) by a person's hand (Smith Fig. 1 and Col. 3 line 23-24); and attachment means (Smith Fig. 2 #3) *for attaching the pair of opposing handles adjacent to a child's body on opposite sides of a child's center of gravity;* the attachment means being configured so that at least one handle lies next to a child's body or clothing while the restraint device is worn so that a hand gripping the

handle remains close to the child's body during use and so that at least a portion of the hand gripping the handle is disposed between at least a portion of the hand and the child's body (Smith teaches that the restraint device is worn by a jet ski driver (Smith Fig. 1 and Co. 1 line 11) and it is known that children drive them for fun and thus the driver encompasses children, children that operate a jet ski satisfy and anticipate the limitations of the claim); the handles *being sized so as to allow insertion therein of at least three fingers of a person using the device to hold or restrain a child* (Smith Col. 3 line 23-24); the handles extending laterally away (Smith Fig. 2) from a surface of the attachment means so as to provide an opening into which a person *can* readily insert fingers without spreading the handles apart from the attachment means.

Given another interpretation of the claim it could be viewed that Smith does not explicitly teach the restraint device being worn by a child. However, it is a known safety measure to provide life jackets of various sizes including children's sizes, i.e. depends on the size of the person. Thus, it would have been obvious to one of ordinary skill in the art to modify the teachings of Smith at the time of the invention since the modification is merely a change in size to accommodate a child to provide proper safety/rescue measures [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Smith teaches a container or basin that holds a quantity of water (i.e. an ocean or a lake where the jet ski is operated).

Regarding Claim 2, Smith teaches the handles comprising at least one loop of elastomer (Smith Col. 3 line 34) having an opening that *accommodates insertion* of four fingers therethrough while gripping the loop.

Regarding Claim 3, Smith teaches the attachment means comprises a single sheet or strap of flexible material configured so as to wrap at least partially around a child's body (Smith #2).

Regarding Claim 4, Smith teaches the attachment means comprising a plurality of straps configured so as to wrap at least partially around the child's torso or limbs (Smith Fig. 2 #3).

Regarding Claims 5 and 6, Smith teaches the attachment means comprises one or more buckle fastening devices *configured* so as to releasably attach the attachment means to a child's body (Smith Fig. 2 #4).

Regarding Claim 7, Smith teaches the attachment means *configured* (merely capable of) so as to position one of the handles at or near the child's spine and the other of the handles at or near the child's sternum (Smith Fig. 2 #8a is **near** the spine and Fig. 2 #8b is **near** the sternum since near merely means in the vicinity, close by, in the neighborhood; it can also be view that since the handles of Smith are releasable they are capable of being positioned at various locations around the attachment means).

Regarding Claim 8, Smith teaches the attachment means *configured* so as to position the handles at or near a center of at least one of a child's chest, upper back,

lower back, or stomach (Smith Fig. 2 #8a and 8b are **near** all of the claimed locations on the child since near merely means in the vicinity, close by, in the neighborhood).

Regarding Claim 27, Smith teaches a pair of straps that may be selectively connected and unconnected and that form a loop when selectively attached; and attachment means *for selectively connecting and un-connecting the pair of cooperating straps* (Smith Fig. 3 #12, 13a, 13b)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,514,019 to Smith in view of U.S. Patent No. 3,968,994 to Chika.

Regarding Claims 9 and 28, Smith is silent on a head restraining system *configured* to restrain a child's head in a desired position relative to the child's body when the restraint device is in use. However, Chika teaches a child's head restraint system (Chika Fig. 25, Col 2 line 32-33, Col. 6 line 64-68, and Col. 1 line 48) for a vehicle operator of a fast moving vehicle that is *configured* to attaché to a child's head and restrain the child's head in a desired position. It would have been obvious to one of ordinary skill in the art to modify the teachings of Smith with the teachings of Chika at the time of the invention for the advantage of protection of the user of a fast moving vehicle such as a jet ski as taught by Chika (Chika Col. 1 line 15-37).

Claims 10-13, 16, 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,122,778 to Cohen in view of U.S. Patent No. 5,514,019 to Smith.

Regarding Claims 10, 11, 19 and 20-26, Cohen teaches a restraint device *for use in holding or restraining a child in a desired position* (Cohen Col. 1 line 13-15) and a method of bathing (Cohen Fig. 1 and 2 and Col. 3 line 52 and Col. 1 line 23-24); a flexible corset or harness *sized and configured* so as to wrap around at least a portion of a child's body, wherein the corset or harness comprises a plurality of flexible straps (Cohen Fig. 8 #32, 36) that are laterally spaced apart that wrap at least partially around the child's torso but that expose at least a portion of the child's body between the flexible straps so as to permit washing (Cohen Col. 3 line 52 and Col. 7 line 52) of the exposed portion of the child's body between the flexible straps; at least one fastening device (Cohen #38 and 34) connected to the corset or harness that permits selective fastening and unfastening of the corset or harness around at least a portion of the child's body; a pair of opposite handles (Cohen Fig. 9) positioned next to attached to the corset or harness in a manner so that the handle is positioned next to the child's body or clothing *adjacent* (the term adjacent can be interpreted as nearby, next to, bordering) to the spine, sternum, stomach or chest of the child's body so that a hand gripping the handle remains close to the child's body when the present device is in use; the handles are configured to be gripped by a person's hand.

Cohen is silent on explicitly teaching a handle extending laterally away from the flexible corset and *configured* to be gripped by a person's hand. However, Smith teaches releasable handles that attach and extend laterally away from a flexible corset (Smith Fig. 2 #8a and 8b and Col. 2 line 13-17) and that can be versatile and that easily accommodate insertion of at least three of a person's fingers while gripping the loop. It would have been obvious to one of ordinary skill in the art to modify the teachings of Cohen with the teachings of Smith at the time of the invention for the advantage of having additional gripping area and for the comfort of the handle taught by Smith (Smith Col. 2 line 20-21).

Regarding Claim 12, Cohen as modified teaches the handle inherently having sufficient friction that it can be reliably gripped without significant slippage when contacted with soapy water (Cohen Col. 3 line 52).

Regarding Claim 13, Cohen as modified teaches the corset or harness inherently comprising at least one of a fabric, plastic, elastomer, metal or composite material (Cohen #32 and "Fabric" is defined as a "textile").

Regarding Claim 16, Cohen as modified teaches the corset or harness further comprising one or more flexible straps sized and configured so as to wrap around at least one of a child's shoulders or legs (Cohen Fig. 8 #40 and 54).

Regarding Claim 18, Cohen as modified teaches the fastening device comprises at least one of a hook and loop system, a buckle, a tie, a snap, a latch, or a ratchet (Cohen Fig. 8 #4 and 38).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,122,778 to Cohen in view of U.S. Patent No. 5,514,019 to Smith as applied to claim 10 above, and further in view of U.S. Patent No. 5,606,744 to Lindy.

Regarding Claim 17, Cohen as modified is silent on a head restraint device configured to restrain a child's head in a desired position relative to the child's body when the restraint device is in use. However, Lindy teaches a child's harnessed head restraint (Lindy Col. 4 line 67 and Fig. 4 and 5). The device of Lindy restrains the child's head from bending backwards only to a certain point. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Cohen with the teachings of Lindy at the time of the invention to prevent head injury when the child is unstable as taught by Lindy (Lindy Col. 1 line 11-35).

Response to Arguments

Applicant's arguments with respect to claims 1-13 and 16-29 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art

Applicant's claim limitations incorporate a significant amount of functional language. For example, "for use in holding or restraining a child in a desired position" is functional language requiring the apparatus merely being capable of performing that function. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is

capable of performing the intended use, then it meets the claim. Therefore, there are several restraining devices that contain the structure as claimed by applicant, but have applications used for tandem riding of motorcycles. Since applicant's claims have a lot of functional language they could still read on the motorcycle devices since the structure is the same and they are thus capable of performing the function of using it for a child. Examiner suggests that applicant positively claim the functional limitations and provide additional structure in the independent claims to distinguish over the cited prior art of record.

Applicant has not structurally claimed how the head restraint and the corset function together, nor has applicant claimed the structure of the head restraint. Therefore, examiner maintains that Lindy teaches a restraint that does in fact restrain the child's head in a desired position relative to the child's body since the device of Lindy prohibits the child's head from bending backwards. Applicant has not claimed that the head is totally immobile.

Regarding Claim 29, applicant has claimed the frictional enhancing material in an alternative form. In other words, the claim only requires cushioning material be fleece, felt, etc **or** friction enhancing.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Patent Examiner
Art Unit 3643

02 December 2005